

Remarks:

Amendments to the claims:

Claims 1-21, 24-36 and 39 are pending in this application, with claim 39 withdrawn from consideration at this time. By this Amendment, claims 1, 2, 24 and 25 are amended, and claims 22, 23, 37 and 38 are cancelled.

No new matter is added to the application by this Amendment. Support for the new features added to claims 1 and 2 can be found in cancelled claims 22 and 23.

Regarding the rejection of claims 1, 3-13 and 32-38 under 35 USC 103(a) as allegedly being unpatentable over US Patent No. 6,058,946 to Bellati et al. (hereinafter "Bellati") in view of US Patent Publication No. 2002/0100773 to Rodd et al. (hereafter "Rodd"); Applicants traverse the Examiner's rejection of the foregoing claims as allegedly being unpatentable over Bellati in view of Rodd.

Prior to discussing the merits of the Examiner's position with respect to "obviousness", the undersigned reminds the Examiner that the determination of obviousness under §103(a) requires consideration of the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1 [148 USPQ 459] (1966): (1) the scope and content of the prior art; (2) the differences between the claims and the prior art; (3) the level of ordinary skill in the pertinent art; and (4) secondary considerations, if any, of nonobviousness. More recently in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007), the Supreme Court held that The Supreme Court in KSR noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), stated that "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396. Exemplary rationales that may support a conclusion of obviousness include:

- (A) Combining prior art elements according to known methods to yield predictable results;
- (B) Simple substitution of one known element for another to obtain predictable results;
- (C) Use of known technique to improve similar devices (methods, or products) in the same way;
- (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (E) "Obvious to try" - choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
- (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art;
- (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. See MPEP 2141 (III).

A methodology for the analysis of obviousness was set out in *In re Kotzab*, 217 F.3d 1365, 1369-70, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000) A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher."

It must also be shown that one having ordinary skill in the art would reasonably have expected any proposed changes to a prior art reference would have been successful. *Amgen, Inc. v. Chugai Pharmaceutical Co.*, 927 F.2d 1200, 1207, 18 USPQ2d 1016,

1022 (Fed. Cir. 1991); *In re O'Farrell*, 853 F.2d 894, 903-04, 7 USPQ2d 1673, 1681 (Fed. Cir. 1988); *In re Clinton*, 527 F.2d 1226, 1228, 188 USPQ 365, 367 (CCPA 1976). "Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure." *In re Dow Chem. Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988).

The Patent Office alleges that each and every feature of the foregoing claims would have been obvious to a skilled artisan at the time the invention was made based on the teachings of Bellati and Rodd. Applicants respectfully disagree with the allegations by the Patent Office as set forth in the Office Action.

In view of the cancelation of claims 37 and 38, this rejection is moot with respect to those claims.

Amended independent claim 1 requires the features of canceled claims 22 and 23, and claims 22 and 23 were not rejection under 35 USC 103(a) in view of Bellati and Rodd. Accordingly, Bellati and Rodd, taken singly or in combination, do not teach or suggest a device having an auxiliary chamber disposed adjacent the body of the device external to the inlet or outlet apertures, wherein the auxiliary chamber comprises auxiliary chamber closure means associated with an access opening as required by amended claim 1.

Because the features of independent claim 1 are neither taught nor suggested by Bellati and Rodd, taken singly or in combination, those references would not have rendered obvious the features specifically defined in claim 1 and its dependent claims.

For at least these reasons, claims 1, 3-13 and 32-36 are non-obvious in view of Bellati and Rodd, taken singly or in combination. Reconsideration and withdrawal of the rejection of the claims under 35 USC 103(a) are respectfully requested.

Regarding the rejection of claims 1, 2 and 20-31 under 35 USC 103(a) as allegedly being unpatentable over Rodd in view of Bellati:

Applicants traverse the Examiner's rejection of the foregoing claim as allegedly being unpatentable over Rodd in view of Bellati.

The Patent Office acknowledges that Rodd fails to teach an opening for the inlet of wash liquor. The Patent Office introduces Bellati as allegedly remedying the deficiencies of Rodd by allegedly teaching inlet apertures for receiving wash water. The Patent Office alleges that each and every feature of the foregoing claims would have been obvious to a skilled artisan at the time of the invention in view of the teachings of Rodd and Bellati. Applicants respectfully disagree with the allegations of the Patent Office as set forth in the Office Action.

Amended independent claims 1 and 2 require a device having an auxiliary chamber disposed adjacent the body of the device external to the inlet or outlet apertures, wherein the auxiliary chamber comprises auxiliary chamber closure means associated with an access opening.

Rodd is directed to a multi-dosing device designed for the dosing of detergent liquids. Rodd teaches a device that has a dispensing chamber that dispenses multiple doses of an active composition into the washing machine via a complex discharge passage and mechanism.

In contrast, Bellati is directed to a single use dosing device for solid detergents, specifically, detergent tablets. Bellati also teaches a device that utilizes a simple one-step release mechanism where the entire contents of the device are released into a washing machine at the occurrence of this single step.

A skilled artisan would not have been motivated to replace the Rodd's complex discharge passage and mechanism for dispensing a multiple doses of a composition with Beloit's

simple apertures because Bellati's simple apertures would allow wash liquid/liquor to come in contact with Rodd's composition and wash the entire composition away into the washing machine as a single dose. By implementing Bellati's apertures into Rodd's multi-dosing device, the resulting combination achieved would have been a multi-dosing device that would dispense all of its contents in a single dose via these simple apertures. In other words, the device of Rodd modified with Bellati's apertures, as alleged by the Patent Office, would have rendered the resulting device **inoperable for its intended use as a multi-dosing device**. As set forth in MPEP § 2143.01 (V):

“If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, *there is no suggestion or motivation to make the proposed modification.*”

This legal principle is well-settled and finds ample support in the case law. *See, In re Kramer*, 18 USPQ2d 1415, 1416 (Fed. Cir. 1991) (“[I]t is equally true that if the *teachings* of a prior art reference would lead one skilled in the art to make a modification which would render another prior art device inoperable, then such a modification would generally not be obvious (italics in original).”) *See, also, In re Gordon*, 221 USPQ 1125, 1127 (Fed. Cir. 1984) (Apparatus, which was required to be turned upside down to meet the terms of the claims, but, by such action would be “rendered inoperable for its intended purpose,” in effect “teaches away from the board’s proposed modification.”)

Accordingly, Applicants respectfully submit that a person of ordinary skill in the art would not have been motivated to modify Rodd with the teachings of Bellati to achieve the presently claimed device as alleged by the Patent Office, and a *prima facie* case of obviousness cannot be established. Therefore, Applicants respectfully request that the Examiner withdraws this rejection.

For at least these reasons, claims 1, 2, 20, 21 and 24-31 are patentable distinct from and/or non-obvious in view of Rodd and Bellati. Reconsideration and withdrawal of the rejection of the claims under 35 USC 103(a) are respectfully requested.

In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

Regarding the rejection of claims 14 and 15 under 35 USC 103(a) as allegedly being unpatentable over Bellati and Rodd in view of US 2,698,022 to Fahnoe:

The Applicants respectfully traverse the rejection of the foregoing claims in view of Bellati, Rodd and Fahnoe.

The Patent Office acknowledges that Bellati and Rodd fail to teach a rod and flange. The Patent Office introduces Fahnoe as allegedly remedying the deficiencies of Bellati by allegedly teaching an arm and pivot which have a terminal end that bonds to the snap elements like a flange. Moreover, the Patent Office alleges that (a) mounting means for a bimetal element were known at the time of invention as functionally equivalent mounting devices for bimetals in dispensing devices, and (b) it would have been obvious to one of ordinary skill in the art at the time of the invention to use a plate and rod, as taught by Fahnoe, in order to fasten a bimetal element. Applicants respectfully disagree with the allegations of the Patent Office as set forth in the Office Action.

Fahnoe fails to remedy the deficiencies of Bellati and Rodd as set forth above with respect to claim 1, from which claims 14 and 15 indirectly depend, because Fahnoe does not teach or suggest a device having an auxiliary chamber disposed adjacent the body of the device external to the inlet or outlet apertures, wherein the auxiliary chamber comprises auxiliary chamber closure means associated with an access opening.

Accordingly, Bellati, Rodd and Fahnoe, taken singly or in combination, fail to teach or suggest a device having an auxiliary chamber disposed adjacent the body of the device external to the inlet or outlet apertures, wherein the auxiliary chamber comprises auxiliary chamber closure means associated with an access opening as required by claim 1.

Because these features of independent claim 1 are not taught or suggested by Bellati, Rodd and Fahnoe, taken singly or in combination, these references would not have rendered the features of claims 14 and 15 obvious to one of ordinary skill in the art.

In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

Regarding the rejection of claims 16-19 under 35 USC 103(a) as allegedly being unpatentable over Bellati and Rodd in view of U.S. Patent No. 4,142,676 to Hattori:
The Applicants respectfully traverse the rejection of the foregoing claims in view of Bellati, Rodd and Hattori.

The Patent Office acknowledges that Bellati and Rodd fail to teach use of two bimetal elements. The Patent Office introduces Hattori as allegedly remedying the deficiencies of Bellati and Rodd by allegedly teaching a bimetal valve with first and second bimetal discs that interact. Moreover, the Patent Office alleges that (a) such an arrangement was known at the time of invention, which allows response to multiple temperatures, and (b) it would have been obvious to one of ordinary skill in the art at the time of the invention to use two bimetal elements, as taught by Hattori, for response to multiple temperature levels. Applicants respectfully disagree with the allegations of the Patent Office as set forth in the Office Action.

Hattori fails to remedy the deficiencies of Bellati and Rodd as set forth above with respect to claim 1, from which claims 16-19 directly or indirectly depend. Thus, Bellati, Rodd and Hattori, taken singly or in combination, fail to teach or suggest a device having an auxiliary chamber disposed adjacent the body of the device external to the inlet or outlet apertures, wherein the auxiliary chamber comprises auxiliary chamber closure means associated with an access opening as required by claim 1.

Because these features of independent claim 1 are not taught or suggested by Bellati, Rodd and Hattori, taken singly or in combination, these references would not have rendered the features of claims 16-19 obvious to one of ordinary skill in the art.

In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

Should the Examiner in charge of this application believe that telephonic communication with the undersigned would meaningfully advance the prosecution of this application, they are invited to call the undersigned at their earliest convenience. The early issuance of a *Notice of Allowability* is solicited.

PETITION FOR A TWO-MONTH EXTENSION OF TIME

The applicants respectfully petition for a two-month extension of time in order to permit for the timely entry of this response. The Commissioner is hereby authorized to charge the fee to Deposit Account No. 14-1263 with respect to this petition.

CONDITIONAL AUTHORIZATION FOR FEES

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

Respectfully submitted,

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